

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-621-C - ORDER NO. 95-1362 ✓
JULY 13, 1995

IN RE: Application of Cherry Communications, Inc.) ORDER
for a Certificate of Public Convenience and) APPROVING
Necessity for Authority to Provide Resold) CERTIFICATE
Intrastate Interexchange Telecommunications)
Services Within the State of South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Cherry Communications, Inc. (Cherry or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1993) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Cherry to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Cherry's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Cherry complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to

Intervene was filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

A public hearing was commenced on June 28, 1995, at 10:30 a.m., in the Commission's Hearing Room. The Honorable Rudolph Mitchell, Chairman, presided. Cherry was represented by Robert D. Coble, Esquire and Faye A. Flowers, Esquire; Hana Pokorna-Williamson, Esquire, represented the Consumer Advocate, and F. David Butler, General Counsel, represented the Commission Staff.

In support of its Application, Cherry presented the testimony of David Giangreco, President of Cherry. Mr. Giangreco explained the Company's request for authority to provide interexchange telecommunications services in South Carolina as a non-facilities based reseller. Mr. Giangreco described the Company's services, its managerial, technological, and financial resources, and its marketing procedures. Mr. Giangreco also testified that Cherry would amend its tariff to reflect a maximum rate schedule and a current rate schedule (or price list), and amend its tariff to accommodate Staff's other requests. Mr. Giangreco stated that Cherry will provide its services in compliance with the Commission's rules and regulations. Mr. Giangreco also detailed certain legal troubles of Mr. Elliott, the founder and 100% shareholder of the Company, and the difficulties that Cherry has encountered with various State Commissions and the Federal Communications Commission (FCC). Some of the concerns expressed by these were due to allegations of Cherry "slamming" customers.

After full consideration of the applicable law, the Company's

Application, the evidence presented by the Company and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Cherry is incorporated under the laws of the State of Illinois, and has received a Certificate of Authority to Transact Business as a Foreign Corporation in the State of South Carolina.

2. Cherry operates as a non-facilities based reseller of interexchange services and wishes to do so in South Carolina.

3. Cherry has the experience, capability, and financial resources to provide the services as described in its Application.

4. Cherry has had various legal troubles across the United States, which justifies placing Cherry on a one-year probationary period.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Cherry to provide intrastate interLATA service and to originate and terminate toll traffic in the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Services (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission. Said service shall be provided on a one-year probationary basis, counted from the date of this Order. During this period, the Commission Staff will closely monitor the

operations and service of the Company. At or near the end of this period, this Commission will consider whether or not to allow Cherry to retain its authority on a permanent basis.

2. The Commission adopts a rate design for Cherry for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Cherry shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Cherry shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1994).

4. Cherry is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if they so desire.

6. Cherry shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Cherry changes underlying carriers, it shall notify the Commission in writing.

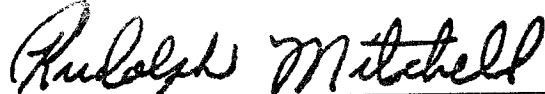
7. With regard to the origination and the termination of toll traffic in the same LATA, Cherry shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

8. Cherry shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.


9. Cherry shall file its revised tariff and accompanying price list reflecting the findings herein and its agreed upon tariff amendments within thirty (30) days of the date of this Order. The revised tariff shall be consistent with the Commission's Rules and Regulations. Further, the tariff shall be filed with the Commission in a loose-leaf binder.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


CHAIRMAN

ATTEST:


Deputy Executive Director
(SEAL)

CONCURRING OPINION OF COMMISSIONER C. DUKES SCOTT
CHERRY COMMUNICATIONS, INC. (DOCKET NO. 94-621-C)

I agree with the Commission decision in this case to the extent that Cherry Communications, Inc. (Cherry) is granted a Certificate of Public Convenience and Necessity to operate as a reseller of telecommunications services within the State of South Carolina. However, as I noted during the Commission Meeting, I would grant Cherry the Certificate without the probation.

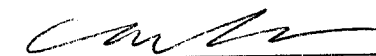
Cherry presented an excellent and well prepared case during the hearing in this matter. The witness for Cherry was candid, truthful and open about any issues with which the Commission may have been concerned in the past. The attorneys for Cherry did an outstanding job.

I was convinced by the evidence presented that Cherry

will do a good job providing service in the State of South Carolina and that Cherry is fit, willing and able to provide the proposed service. I do not see the need to place Cherry on probation, particularly for a full year.

Therefore, I concur with the Commission's Order in that it grants a Certificate to Cherry, but I would not have placed Cherry on probation for a year.

Respectfully submitted,



C. Dukes Scott
Commissioner, Second District

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE